In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1358

PAUL DE LUCIA, PETITIONER

v.

ATTORNEY GENERAL OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR RESPONDENT IN OPPOSITION

Petitioner is an alien who was born in Italy in 1897 and lived in Italy until 1920, when he fled to escape prosecution for homicide after having previously been convicted and imprisoned for another homicide. He entered the United States in 1920 under a false name and passport and continued the fraud in applying for naturalization, which he obtained in 1928(J.A. 6-7). His fraud was discovered and he was denaturalized. *United States* v. *De Lucia*, 256 F.2d 487 (C.A. 7), certiorari denied, 358 U.S. 836.

He was ordered deported on the basis of his fraudulent entry and the deportation order was upheld on judicial review. *De Lucia* v. *Flagg*, 297 F.2d 58 (C.A. 7), certiorari denied, 369 U.S. 837. When ordered to report for deportation, he brought new proceedings for judicial review, claiming irregularities in the administrative proceedings. Thereafter, the administrative proceedings were reopened by stipulation of the parties, in order to afford petitioner an opportunity to present applications for discretionary relief and to have the special inquiry officer designate the country of deportation (J.A. 7).

In the course of these administrative hearings, petitioner contended that he was not an Italian national, having lost his native Italian citizenship upon his naturalization in the United States. In denying the application both the special inquiry officer and the Board of Immigration Appeals recited petitioner's claim that he was stateless and avoided a determination that he was an Italian national. They directed his deportation to Great Britain, the country of his choice, or, in the alternative, to Italy. They found that, taking into account the relevant contingencies described in Section 243(a) of the Immigration and Nationality Act, 8 U.S.C. 1253(a), petitioner was deportable to Italy, since he had been born in Italy and had last resided in that country (J.A. 7-9). The deportation order was reinstated and that order was affirmed by the Board of Immigration Appeals in April 1966. Petitioner then sought judicial review of that order in the Court of Appeals for the Seventh Circuit. One of his contentions was that the Board of Immigration

Appeals and the special inquiry officer had refused to make any finding as to citizenship. The court of appeals ruled that the order directing petitioner's deportation to Italy complied with the statute and the regulations. *De Lucia* v. *Immigration and Naturalization Service*, 370 F.2d 305 (C.A. 7), certiorari denied, 386 U.S. 912.

Immediately thereafter, in February 1967, petitioner brought the present proceeding in the United States District Court for the District of Columbia, seeking a declaratory judgment and injunction. He contended that the District Director of the Immigration Service in Chicago had incorrectly and improperly determined that petitioner was an Italian citizen (Pet. App. D; J.A. 2-5). The determination was allegedly made in statements concerning petitioner submitted to Italy in 1964, before the deportation proceedings were reopened, and to the United Kingdom in April 1966, after the deportation order had been reinstated and petitioner had designated that country as his first choice. The record shows that on March 1, 1967, the British government was advised that petitioner claimed statelessness. Subsequently, the British government responded that petitioner would not be permitted to enter Great Britain as a deportee from the United States (Ex. 2-3, J.A. 12-15). With regard to Italy, petitioner himself brought litigation in the Italian courts seeking a declaration that he is not a citizen of Italy and a directive rescinding the travel document previously issued for him. That travel document was in fact suspended by the Italian government in April 1966. The respondent repre-

sented in the district court that in future dealings with Italy, it would be stated that petitioner claimed statelessness (J.A. 11). Petitioner now states (Pet. 5, n. 4) that on March 20, 1967, the Italian courts ruled that he is no longer a citizen of Italy.

On April 21, 1967, the district court dismissed the instant proceeding for lack of jurisdiction (Pet. App. A). The court of appeals affirmed the judgment of dismissal on March 21, 1968. It stated that during the reopened deportation proceedings "the questions of appellant's alleged statelessness and of the designation of Italy as a country of deportation were considered. Thus, it is clear that his present claim is only colorably directed at the ministerial act of the Chicago District Director in stating that appellant is a citizen of Italy. Appellant's apparent purpose is again to challenge his deportation order" (Pet. 11). The court held that "the act by the Chicago District Director which appellant seeks to review is clearly subject to the limitation on judicial review of § 106 (a) and can only be considered by the Court of Appeals for the Seventh Circuit" (Pet. 12).

The issue of the scope of Section 106(a) with respect to determinations which affect a deportation order but are not made by a Special Inquiry Officer is before this Court in *Kwok* v. *Immigration and Naturalization Service*, No. 638, argued May 2, 1968. Aside from the fact that there are even stronger reasons in the present case than in *Kwok* for exclusive jurisdiction in the court which issued the deportation order, there is no occasion to defer action on this petition. The undisputed facts negate the exist-

ence of an actual controversy or of anticipated irreparable harm which are the recognized predicates for declaratory or injunctive relief. Moreover, such slender basis as was originally alleged has now been reduced to an irrelevancy. The government of the United Kingdom has rejected petitioner as a deportee from the United States. With respect to Italy, regardless of what was said in 1964, there is no possibility that the governments of Italy or the United States would hereafter consider petitioner to be a citizen of Italy, in the face of the contrary holding by the Italian court. Petitioner is continuing to press a non-existent controversy on a question which ceased to have any claim to materiality before the case was appealed to the court of appeals. Whatever the scope of Section 106 review, this action was properly dismissed.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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